

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7643

HARISHA J. BASTIAMPILLAI
ATTORNEY
DIRECT DIAL (202) 424-7869
HJBASTIAMPILLAI@SWIDLAW.COM

NEW YORK OFFICE
405 LEXINGTON AVENUE
NEW YORK, NY 10174

December 17, 2001

VIA COURIER

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
TW-B204
445 Twelfth Street, S.W.
Washington., DC 20554

RECEIVED

DEC 17 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Please deliver to:

9300 East Hampton Drive
Capitol Heights, Maryland 20743

Re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Special Services, Inc. for Authorization to Provide In-region, InterLATA Services in Rhode Island, CC Docket No. 01-324 /

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's November 26, 2001 Public Notice Requesting Comments are an original and four paper copies of the Comments of CTC Communications Corp.

Please date stamp and return the enclosed extra copy of this filing. Should you have any questions concerning this filing, please do not hesitate to call us.

Respectfully submitted,



Harisha J. Bastiampillai

Enclosures

No. of Copies rec'd 0+4
List ABCDE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Application of Verizon New England, Inc.,
Bell Atlantic Communications, Inc.
(d/b/a Verizon Long Distance), NYNEX
Long Distance Company (d/b/a Verizon
Enterprise Solutions), Verizon Global
Networks, Inc., and Verizon Select Services
Inc. for Authorization To Provide
In-Region, InterLATA Services
in Rhode Island

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525

RECEIVED

DEC 17 2001

OFFICE OF THE SECRETARY

Pamela Hintz
Director of Regulatory & Tariff Compliance
360 Second Avenue
Waltham, Massachusetts 02451
(781) 466-1242 (Telephone)
(781) 466-1306 (Facsimile)

Eric J. Branfman
Edward W. Kirsch
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

Dated: December 17, 2001

TABLE OF CONTENTS

SUMMARY	ii
I. VERIZON'S DARK FIBER TERMS DO NOT COMPLY WITH CHECKLIST ITEMS 2, 4, AND 5	2
A. Contrary to the Plain Meaning of the Act and Checklist Items 2, 4, and 5, Verizon Does Not Provide Dark Fiber At Any Technically Feasible Point.....	2
B. Verizon's Dark Fiber Terms and Conditions Are Unreasonable When Compared to the Terms It Offers In Massachusetts and New Hampshire	3
1. Verizon Splices Dark Fiber for CLECs in Massachusetts and New Hampshire But Has Refused To Splice in Rhode Island.....	4
2. Verizon's Policies Regarding Routing of Dark Fiber Through Intermediate Offices Violate the Act And Are More Restrictive in Rhode Island Than In Massachusetts or New Hampshire	5
3. Verizon's Responses To A CLEC Inquiry Regarding the Availability of Dark Fiber Are Deficient As Compared To Its Practices In New Hampshire.....	6
II. The RHODE ISLAND COMMISSION HAS REQUIRED VERIZON TO ADOPT REASONABLE PRACTICES AND OFFER REASONABLE TERMS TO CLECs ON A PROSPECTIVE BASIS.....	8
III. UNTIL VERIZON EVIDENCES AN INTENT TO COMPLY WITH THE RHODE ISLAND ORDER, IT IS NOT IN COMPLIANCE WITH SECTION 271 REQUIREMENTS.....	9
IV. CONCLUSION.....	11

SUMMARY

Verizon would have this Commission conduct only a cursory review of its dark fiber offering. Verizon claims that its dark fiber offering is the same as what it offers in other states and that this Commission has previously found this product offering to be compliant with Section 271 requirements.¹ Verizon's representations are inaccurate on both points. Its dark fiber offering in Rhode Island is significantly inferior to what it offers in other states in its region such as Massachusetts and New Hampshire. In addition, the Commission has not approved this deficient product offering in its orders granting Verizon Section 271 authority. In New York, the Commission did not require Verizon to show compliance in regard to the new unbundled network elements, including dark fiber, that it designated in its *UNE Remand Order*.² In Massachusetts, as CTC shall demonstrate, Verizon's dark fiber offering is far superior to what it is offering in Rhode Island. In Pennsylvania, the Commission declined to address the particulars of Verizon's dark fiber offering because the Pennsylvania Public Utilities Commission was addressing those issues in a pending arbitration.³ In Connecticut, there was negligible demand for interoffice facilities given Verizon's limited presence in the state so the Commission did not conduct an extensive analysis on dark fiber.⁴

Thus, there is no basis for truncated review of Verizon's dark fiber offering. In fact, the Rhode Island Public Utilities Commission had to issue an order in a separate docket requiring Verizon to make significant improvements to its dark fiber offerings to bring it even close to being in conformance to what it offered in other states, such as Massachusetts and New

¹ Verizon Application at 47.

² *BANY 271 Order* at ¶ 31, n. 70.

³ *Verizon PA 271 Order*, at ¶ 113.

⁴ *Verizon CT 271 Order*, at ¶¶ 65.

Hampshire. This Commission should require that Verizon evidence an unequivocal intent to abide by the terms of that Rhode Island order before finding its dark fiber offering to be in compliance with Checklist Items 2, 4, and 5. Without such a representation on the part of Verizon, Verizon cannot be found to be in compliance with these checklist items.

Contrary to the unambiguous language of Section 251(c)(3),⁵ Verizon has refused to provide dark fiber at “any technically feasible point” in Rhode Island. Specifically, Verizon has steadfastly refused to provision dark fiber transport through intermediate offices and in situations where access would require splicing at existing splice points, despite the fact that it has not demonstrated that such access is not technically feasible. Verizon provides such access in Massachusetts and New Hampshire. As CTC demonstrates in these Comments, as a result of Verizon’s policies, continuous dark fiber routes are often unavailable in Rhode Island and other Verizon operating territories where similar policies are in place.

The Commission determined that challenges raised to the terms and conditions of Verizon’s dark fiber offering in Pennsylvania were best raised through state commission proceedings. CTC has raised its challenges before the Rhode Island PUC, and the Rhode Island PUC ordered Verizon to make improvements to its service offering. Verizon should be required to demonstrate, as a condition of approval of this Application, that it will accede to the requirements ordered by the Rhode Island PUC.

⁵ 47 U.S.C. § 251(c)(3).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

DEC 17 2001

OFFICE OF THE SECRETARY
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Application of Verizon New England, Inc.,)
Bell Atlantic Communications, Inc.)
(d/b/a Verizon Long Distance), NYNEX)
Long Distance Company (d/b/a Verizon)
Enterprise Solutions), Verizon Global)
Networks, Inc., and Verizon Select Services)
Inc. for Authorization To Provide)
In-Region, InterLATA Services)
in Rhode Island)

CC Docket No. 01-324

**COMMENTS OF
CTC COMMUNICATIONS CORP.**

CTC Communications Corp. ("CTC") submits these comments concerning the above-captioned Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc. (collectively, "Verizon" or "Applicants") for Provision of In-Region, InterLATA Services in Rhode Island filed November 26, 2001 ("Application").⁶ For the reasons stated herein, the Federal Communications Commission ("Commission") should condition its approval of the Application based on Verizon's demonstration that it will comply with the requirements of Competitive Checklist Items 2, 4, and 5 as set forth in this petition.

⁶ Comments Requested on the Application By Verizon For Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Rhode Island and Providence Plantations, Public Notice, CC Docket No. 01-324, DA 01-2746 (rel. November 26, 2001).

CTC is a reseller and facilities-based provider of local and long distance services, dedicated access, and other services to business customers in Rhode Island.

I. Verizon's Dark Fiber Terms Do Not Comply With Checklist Items 2, 4, and 5

A. Contrary to the Plain Meaning of the Act and Checklist Items 2, 4 and 5, Verizon Does Not Provide Dark Fiber At Any Technically Feasible Point

Section 271(c)(2)(B)(ii) of the Act requires an RBOC seeking in-region interLATA authority to offer “nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).”⁷ Section 251(c)(3), in turn, requires incumbent LECs “to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”⁸ As demonstrated more fully below, Verizon does not provide access to dark fiber network elements in Rhode Island, and several other states, at “any technically feasible point” and on “reasonable” terms as required by Section 251(c)(3) and Checklist Items 2, 4, and 5.

Contrary to the unambiguous language of Section 251(c)(3), Verizon has refused to provide dark fiber at “any technically feasible point” in Rhode Island. Specifically, Verizon has steadfastly refused to provision dark fiber transport through intermediate offices and in situations where access would require splicing at existing splice points, despite the fact that it has not demonstrated that such access is not technically feasible.⁹ Rather, in these situations Verizon's response to a CLEC inquiry has been that no facilities are available. In fact, Verizon cannot

⁷ 47 U.S.C. § 271(c)(2)(B)(ii) (“Checklist Item II”).

⁸ 47 U.S.C. § 251(c)(3) (emphasis added).

demonstrate that such access to dark fiber is not technically feasible because it presently provides access to dark fiber at intermediate offices and performs splicing at existing splice points upon a CLEC's request in Massachusetts and New Hampshire.¹⁰

B. Verizon's Dark Fiber Terms Are Unreasonable When Compared to the Terms It Offers In Massachusetts and New Hampshire

Verizon claims in its Application that it "provides access to each of the individual unbundled network elements specified by the FCC's Rule 319 in the same manner as in Massachusetts."¹¹ More specifically, Verizon contends that it provides unbundled local loops, including high capacity loops, and local transport using substantially the same processes and procedures in Rhode Island that that it uses in Massachusetts.¹² Notwithstanding these facile assertions, Verizon admitted before the Rhode Island Public Utilities Commission ("RI Commission") that it offers CLECs significantly more favorable terms and conditions regarding the dark fiber unbundled network element in Massachusetts (and in New Hampshire) than it offers to CLECs in Rhode Island.¹³ Moreover, Verizon has steadfastly refused to provide CLECs operating in Rhode Island with the same reasonable dark fiber terms that are available in Massachusetts and New Hampshire.¹⁴

⁹ RI Section 271 Tr., Oct. 10, 2001, at 112:14-18; 124-126; 127:1-14; 129:9-15; 155:5-12; 194:18-21 (Ms. Detch: "Verizon will not splice dark fiber."). The October 10th transcript is found in Appendix B, Volume 5, Tab 11 of Verizon's Application.

¹⁰ RI Section 271 Tr., Oct. 10, 2001, at 110:10-24; 127:1-14; 129:9-15; 155:5-12.

¹¹ Verizon Application, Declaration of Paul A. Lacouture and Virginia P. Ruesterholz at ¶ 81 ("Lacouture/Ruesterholz Declaration").

¹² Verizon Application, at p. 23.

¹³ RI Section 271 Tr., Oct. 10, 2001, at 112:14-18; 124-126; 127:1-14; 129:9-15; 155:5-12; 194:18-21 (Ms. Detch: "Verizon will not splice dark fiber."); *see also*, CTC Declaration, attached hereto as Exhibit A, at ¶¶ 16-19.

¹⁴ RI Section 271 Tr., Oct. 10, 2001, at 112:14-18; 116:4-10.

1. Verizon Splices Dark Fiber for CLECs in Massachusetts and New Hampshire But Has Refused To Splice in Rhode Island

In Massachusetts, Verizon MA will perform splicing at the CLEC's request on a time-and-materials basis in order to make a fiber strand "continuous by joining fibers at existing splice points within the same sheath" to facilitate, *inter alia*, routing of fiber through intermediate offices.¹⁵ Also, in New Hampshire Verizon will perform splicing at the CLEC's request on a time-and-materials basis "at existing termination points."¹⁶ As a result, more dark fiber routes are potentially available to CLECs in Massachusetts and New Hampshire, including routes through intermediate offices, than are likely to be available in Rhode Island. In sharp contrast to the terms it offers in Massachusetts and New Hampshire, in Rhode Island, Verizon refuses to "open existing splice points" and perform splicing upon a CLECs request in order to make dark fiber available for unbundling.¹⁷ Verizon's policy regarding splicing of dark fiber in Rhode Island is inconsistent with the plain language of Section 251(c)(3) of the Act and Checklist Items

¹⁵ See CTC Declaration at ¶ 17; Verizon New England, Inc., Rates and Charges Effective in the Commonwealth of Massachusetts, DTE MA Tariff No. 17, Miscellaneous Network Services, Part B, § 17.1.1.A.1 ("Mass. DTE No. 17"); Verizon MA's Unbundled Dark Fiber Service Description, Aug. 31, 2000, at ¶ 1.1 ("Mass. Service Description"). The provisions of the Verizon's Massachusetts DTE Tariff No. 17 regarding dark fiber unbundled network elements are attached to CTC's Declaration as Attachment CTC-03. Verizon's Mass. Service Description which describes its dark fiber unbundled network offering as submitted to the Massachusetts DTE is attached to CTC's Declaration as Attachment CTC-04. The Massachusetts Service Description was submitted as required by the DTE in *New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts*, Decision P.U./D.T.E. 96-83, 96-94-Phase 4-N (Mass. DTE Dec. 13, 1999).

¹⁶ *Order Finding Dark Fiber Subject to the Unbundling Requirement of Section 251 of the Telecommunications Act of 1996*, Order No. 22,942, DE 97-229, at 9 (May 19, 1998) ("N.H. Dark Fiber Order"); Section 5.16 of the New Hampshire SGAT. Section 5.16 of the New Hampshire SGAT is attached hereto as Exhibit B.

¹⁷ Tr., Oct. 10, 2001, at 112:14-18; 116:4-10; 194:7-21 ("Verizon will not splice dark fiber [in Rhode Island]"); Verizon R.I. Tariff No. 18, Miscellaneous Network Services, Part B, Section 10, at § 10.1.1 (Verizon "will not introduce additional splice points to accommodate dark fiber requests.") ("R.I. Tariff No. 18"); Verizon's Proposed Interconnection Agreement, §§ 8.5.2, 8.5.3 ("A strand shall not be deemed continuous if splicing is required to provide fiber continuity between two locations."). Verizon's proposed terms for the dark fiber UNE in Rhode Island are attached to CTC's Declaration as Attachment CTC-05.

2, 4, and 5 which require Verizon to provide dark fiber at “any technically feasible point.”¹⁸ As a result of Verizon’s policies, continuous dark fiber routes are often unavailable in Rhode Island and other Verizon operating territories.¹⁹

2. Verizon’s Policies Regarding Routing of Dark Fiber Through Intermediate Offices Violate the Act And Are More Restrictive in Rhode Island Than in Massachusetts Or New Hampshire

Verizon’s current policies in Rhode Island regarding the routing of dark fiber through intermediate offices, and the availability of dark fiber to CLECs render dark fiber less available to CLECs in Rhode Island than in Massachusetts and New Hampshire.²⁰ For example, in Rhode Island, Verizon provides dark fiber transport only where at least one end of the dark fiber transport terminates at a Verizon accessible terminal in a Verizon central office that can be cross-connected to the CLEC’s collocation arrangement. Further, in Rhode Island, dark fiber is only “offered on a route-direct basis” (*i.e.*, no intermediate offices).²¹ In Massachusetts by contrast, a CLEC may access dark fiber, including dark fiber transport, at hard termination points (*e.g.*, fiber distribution frames), or for collocation arrangements, at the fiber tie augment on the POT bay, and, significantly, “at existing splice points.”²² Most importantly, Verizon will perform splicing to join fibers at existing splice points in Massachusetts.²³

¹⁸ 47 U.S.C. § 251(c)(3).

¹⁹ On September 5, 2001, for example, CTC received notice from Verizon that there were “no fibers” available between Verizon’s Burlington, Vermont Central Office (CLLI BURLVTMA) and CTC’s office at Williston, Vermont (CLLI WLSTVT07); Tr., Oct. 10, 2001, at 121-122 (“access to each Verizon central office via dark fiber ubiquitously is only provided by Verizon”).

²⁰ RI Section 271 Tr., Oct. 10, 2001, at 112:14-18; 116:4-10; 110:9-24 (“the major differences are in the access to the interoffice facilities that we were able to get in Massachusetts as well as the ability to have Verizon make splices”).

²¹ Verizon’s Proposed Interconnection Agreement, §§ 8.2, 8.3, 8.4, 8.5.1, 8.5.2, and 8.5.3.

²² Mass. DTE No. 17, § 17.1.1.D; Mass. Service Description, at ¶¶ 1.1, 1.2, 1.15 and 1.16.

²³ Mass. DTE No. 17, § 17.2.1.B; Mass. Service Description, at ¶¶ 1.1, 1.2, 1.15 and 1.16 (“In the case of interconnection at an existing splice point, Verizon-MA, using current Verizon-MA approved splicing methods, will connect to a fiber optic cable provided, installed and maintained by the CLEC.”).

Further, in Massachusetts and New Hampshire, Verizon will provide intermediate cross connections in intermediate wire centers²⁴ so that CLECs can obtain dark fiber at intermediate offices without collocating in the intermediate office. However, Verizon will not provide such cross connects at intermediate wire centers in Rhode Island. As a result, dark fiber is potentially more widely available to CLECs in Massachusetts and New Hampshire than it is in Rhode Island.²⁵ Verizon's restrictive policies in Rhode Island regarding routing of dark fiber through intermediate offices where a CLEC does not have a collocation arrangement and cross connects at intermediate wire centers are unreasonable and violate the mandate of the Act to provide access to UNEs at any technically feasible point.

3. Verizon's Responses To A CLEC Inquiry Regarding the Availability Of Dark Fiber Are Deficient As Compared To Its Practices In New Hampshire

The unreasonableness of Verizon's current terms, conditions and practices regarding dark fiber in Rhode Island is especially evident when these terms, conditions and practices are contrasted with the far more reasonable terms, conditions and practices that Verizon has already implemented in New Hampshire as shown below. Verizon's current practices regarding its response to a CLEC inquiry and the availability of unbundled dark fiber are significantly less favorable to CLECs in Rhode Island than in New Hampshire. Specifically, the New Hampshire Dark Fiber Order requires that Verizon provide a written reply to a CLEC within thirty (30) days when it denies a CLEC request for unbundled dark fiber that includes specific reasons why the request cannot be granted including the following information:

total number of fiber sheath and strands between points on the requested routes,
number of strands currently in use and the transmission speed on each strand (e.g.

²⁴ Mass. DTE No. 17, §§ 17.1.2.A.1; 17.2.1.B, 17.2.1.G (Verizon "will provide intermediate cross-connections between fiber distribution frames in intermediate wire center(s)."); N.H. SGAT, § 5.16.6(G).

²⁵ RI Section 271 Tr., Oct. 10, 2001, at 121-122 ("access to each Verizon central office via dark fiber ubiquitously is only provided by Verizon").

OC-3, OC-48), the number of strands in use by other carriers, the number of strands reserved for Bell Atlantic's use, the number of strands lit in each of the three preceding years, the estimated completion date of any construction jobs planned for the next two years or currently underway, and an offer of any alternate route with available dark fiber. In addition, for fibers currently in use, Bell Atlantic shall specify if the fiber is being used to provide non-revenue producing services such as emergency service restoration, maintenance and/or repair.²⁶

Such information is essential in order for a CLEC to determine the veracity of any claim by Verizon that dark fiber is not "available" on a particular route and to determine whether alternative routes are available.²⁷ In contrast to the extensive information required to be provided when Verizon New Hampshire finds that no dark fiber is available, Verizon recently responded to CTC's inquiry for dark fiber in Vermont, where Verizon uses the same practices as in Rhode Island,²⁸ providing only the following terse explanation: "NO DIRECT ROUTE BURLVTMA-WLSTVT07 NO FIBERS." This explanation is insufficient for CTC to examine the accuracy of Verizon's claim that dark fiber is not available.

Most importantly, the paucity of information provided in Rhode Island, Vermont and other states does not as a practical matter enable a CLEC to determine whether alternative routes are available.²⁹ In fact, under Verizon's current practices, a CLEC in Rhode Island must make a separate inquiry regarding each segment along each potential route to determine if a viable alternative route is available. This is unworkable because of the large number of possible

²⁶ *Order Finding Dark Fiber Subject to the Unbundling Requirement of Section 251 of the Telecommunications Act of 1996*, Order No. 22,942, DE 97-229, at 8 (May 19, 1998) (emphasis added).

²⁷ In September, 2001, for example, Verizon rejected a request by CTC for dark fiber transport from Verizon's central office at 266 Main Street, Burlington, Vt. CLLI BURLVTMA to CTC's POP at 1193 South Brownell Rd. CLLI VLSTVT07. Verizon's sole explanation for the rejection was "NO DIRECT ROUTE BURLVTMA-WLSTVT07 NO FIBERS." CTC is unable to determine from this type of terse explanation whether an alternate route is available.

²⁸ RI Section 271 Tr., Oct. 10, 2001, at 112:14-113:7 (Verizon counsel stated that: "The dark fiber offering that we're making available here in Rhode Island is substantially similar to the offering that we have in every state except for Massachusetts and New Hampshire."); 134:10-24.

²⁹ RI Section 271 Tr., Oct. 10, 2001, at 124-125; 127.

routes.³⁰ In New Hampshire by contrast, upon rejecting a CLEC inquiry for dark fiber, Verizon is required to identify “any alternate route with available dark fiber,” including routes through intermediate offices.³¹ In sum, the New Hampshire Commission obviously views the terms mandated by its Dark Fiber Order as “just” and “reasonable” terms for the provisioning of unbundled dark fiber in conformance with Section 251(c)(3) of the Act. Verizon has refused to make similar terms regarding dark fiber UNEs available to CLECs in Rhode Island in violation of Section 251(c)(3) of the Act.

II. THE RHODE ISLAND COMMISSION HAS REQUIRED VERIZON TO ADOPT REASONABLE PRACTICES AND OFFER REASONABLE TERMS TO CLECS ON A PROSPECTIVE BASIS

During the hearing regarding Verizon’s Section 271 application in Rhode Island Docket No. 3363, the Commission recommended that CTC file its Section 271 evidence regarding dark fiber in both Docket No. 3363 and Docket No. 2681 regarding the TELRIC pricing of dark fiber and other UNEs established by the UNE Remand Order.³² At its Open Meeting on November 15, 2001, the Commission determined that having encouraged CTC to file its arguments regarding dark fiber in Docket No. 2681 addressing TELRIC pricing that Docket No. 2681 would be the appropriate docket in which to address the dark fiber issues.³³ On December 3, 2001, the RI Commission, following the lead of the Massachusetts DTE and NH Commission, took action to address Verizon’s unreasonable practices discussed above. Specifically, the RI Commission ordered Verizon to “splice dark fiber at any technically feasible point so as to make dark fiber continuous through one or more intermediate central offices without requiring a CLEC

³⁰ RI Section 271 Tr., Oct. 10, 2001, at 117:14-24.

³¹ N.H. Dark Fiber Order, at 8.

³² RI Section 271 Tr., Oct. 10, 2001, at 141: 1-15.

³³ RI Section 271 Tr. November 15, 2001, at 15: 2-14. The November 15th transcript is attached in Appendix B, Volume 8, Tab 24 to Verizon’s Application.

to be collocated at any such intermediate offices.”³⁴ In reaching its decision, the RI Commission noted that “this policy will significantly benefit CLECs by lowering the costs to establish their networks by reducing the number of central offices at which CLECs must collocate.”³⁵ The RI Commission also required Verizon to assume the responsibility of identifying alternative dark fiber routes between central offices requested by a CLEC where the route requested by the CLEC is unavailable because Verizon “is the entity most familiar with its own network configuration.”³⁶

III. UNTIL VERIZON EVIDENCES INTENT TO COMPLY WITH THE RHODE ISLAND ORDER, IT IS NOT IN COMPLIANCE WITH SECTION 271 REQUIREMENTS

The RI Commission action in Docket No. 2681 should result in Verizon modifying its practices in Rhode Island to conform to the Act and Checklist Items 2, 4 and 5. However, it appears that the time for Verizon to appeal or seek reconsideration of the RI Commission’s decision in Docket No. 2681 has not passed. It is not clear whether a Verizon appeal of this Order would properly go to the U.S. District Court for the District of Rhode Island or to the Rhode Island Supreme Court, and it is also not clear whether Verizon’s deadline for appeal has passed. In addition, Verizon still has time to seek reconsideration of the Order.³⁷ Accordingly, this Commission should order Verizon to provide dark fiber in accordance with the Rhode Island Commission’s Order and make compliance with the Order a condition of any approval of its Application in the instant proceeding.

³⁴ *In re: Verizon-Rhode Island’s TELRIC Studies – UNE Remand*, Docket No. 2681, Report and Order, at 19, 22-23 (Rhode Island PUC, Dec. 3, 2001). A copy of this order is attached hereto as Exhibit C.

³⁵ *Id.*, at 22.

³⁶ *Id.*

³⁷ *See* Rhode Island Public Utilities Commission Rule 1.28.

Until the Commission has evidence that Verizon will comply with the requirements in the Docket No. 2681 Order, it cannot find that Verizon is in compliance with Checklist Items 2, 4, and 5. Verizon asserts that its “current dark fiber offering in Rhode Island, as well as its processes and procedures are substantially the same as those used in Pennsylvania and Connecticut, which the Commission found satisfy the Act.”³⁸ The Commission, however, did not address the terms and conditions of Verizon’s dark fiber products in either of those proceedings. In Pennsylvania, the Commission explicitly declined to address challenges to the restrictions Verizon places on the provisioning of dark fiber because the issues were being addressed in an arbitration being conducted by the Pennsylvania Commission.³⁹ In Connecticut, the Commission noted:

we conclude that the extremely limited extent of Verizon’s service area in Connecticut renders the provision of interoffice transport of relatively limited significance for purposes of determining whether Verizon’s Connecticut local exchange market is open to competition. As detailed above, there is very little competitive LEC demand for interoffice local transport facilities in Connecticut, and this limited demand will continue in the future because Verizon only has one central office in Connecticut.⁴⁰

Verizon had only four IOF orders in Connecticut in total so the demand for dark fiber would have been negligible at best.⁴¹ Thus, Verizon’s approvals in those two states provide no basis for finding that its terms and conditions are appropriate here. The Commission determined that challenges raised to the terms and conditions of Verizon’s

³⁸ Verizon Application, at p. 47.

³⁹ *Verizon PA 271 Order*, at ¶ 113.

⁴⁰ *Verizon CT 271 Order*, at ¶ 65.

⁴¹ *Verizon CT 271 Order*, at ¶ 64.

dark fiber offering in Pennsylvania were best raised through the Section 252 negotiation and arbitration process, or the Section 208 complaint process.⁴²

CTC appropriately raised its challenges to the Verizon's dark fiber offering in proceedings before the Rhode Island Public Utilities Commission addressing those product offerings. CTC demonstrated that the Act required greater access to dark fiber than what Verizon provided. The Rhode Island PUC found Verizon's dark fiber product offering to be deficient and required that Verizon be required to modify its product offering as described above. Thus, Verizon should be required to demonstrate that it will comply with the dark fiber terms and conditions ordered by the Rhode Island PUC before Verizon is found to be in compliance with its checklist obligations in regard to dark fiber.⁴³

⁴² *Verizon PA 271 Order*, at ¶ 113. While Docket No. 2681 was not a Section 252 proceeding the same reasoning would apply.

⁴³ Today, CTC received a copy of the Verizon's compliance filing containing tariff pages that address the Rhode Island Commission's Order. This filing was due as a matter of course as a result of the Rhode Island Commission's Order and does not provide an indication of whether Verizon will appeal the Order. Since the effective date of the filing is February 2, 2002, Verizon could still seek to suspend the filing.

IV. CONCLUSION

For the foregoing reasons, CTC Communications Corp. urges the Commission to condition its approval of Verizon's application on Verizon evidencing its intent to adhere to the Rhode Island Public Utilities Commission's December 3, 2001 Order in regard to dark fiber.

Respectfully submitted,

A handwritten signature in cursive script, reading "Edward W. Kirsch". The signature is written in dark ink and is positioned above the printed name and address.

Eric J. Branfman
Edward W. Kirsch
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7643 (Facsimile)

Dated: December 17, 2001

CERTIFICATE OF SERVICE

I, Harisha Bastiampillai, hereby certify that on December 17, 2001, I caused to be served upon the following individuals the Comments of CTC Communications Corp. in CC Docket 01-324:



Harisha Bastiampillai

Via Courier:

Note: Courier Copies are delivered to:

9300 East Hampton Drive
Capitol Heights, Maryland 20743

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
TW-B204
445 Twelfth Street, S.W.
Washington., DC 20554

Janice Myles
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 5-C327
445 Twelfth Street, S.W.
Washington, DC 20554

Qualex International
Portals II
445 12th Street, S.W., Room CY-B402
Washington, DC 20554

Via Overnight Delivery:

Evan T. Leo
Scott H. Angstreich
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, DC 20036

Kelly Trainor
U.S. Department of Justice
Antitrust Division
Telecommunications Task Force
1401 H St. NW, Suite 8000
Washington, DC 20530

Via First Class Mail:

Steve Frias
Rhode Island Public Utilities Commission
Division of Public Utilities and Carriers
89 Jefferson Boulevard
Warwick, Rhode Island 02888

Michael E. Glover
Karen Zacharia
Leslie V. Owsley
Donna M. Epps
Joseph DiBella
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201

Bruce P. Beausejour
Keefe B. Clemons
Verizon New England, Inc.
185 Franklin Street
Room 1403
Boston, MA 02110

James G. Pachulski
TechNet Law Group, P.C.
1100 New York Avenue, N.W.
Suite 365
Washington, D.C. 20005